

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Investigation Into the Actions of  
Southern California Edison Company (U 338 E),  
and Its Officers and Employees for  
Non-Compliance with a Commission Decision.

FILED  
PUBLIC UTILITIES COMMISSION  
DECEMBER 11, 2001  
SAN FRANCISCO, CALIFORNIA  
INVESTIGATION 01-12-007

**ORDER INSTITUTING INVESTIGATION AND ORDER TO SHOW  
CAUSE DIRECTED TO SOUTHERN CALIFORNIA EDISON,  
ITS OFFICERS AND EMPLOYEES FOR THEIR FAILURE  
TO COMPLY WITH DECISION 01-06-039**

**Summary**

The Commission opens this investigation and orders Southern California Edison Company (Edison), its officers and employees to show cause whether or not they should be held in contempt, subject to penalties, and referred to the appropriate authorities to file criminal proceedings for their failure to comply with Decision (D.) 01-06-039. D.01-06-039 directed Edison to tender its test year (TY) 2003 General Rate Case Notice of Intent (NOI) to the Commission no later than August 15, 2001. The Commission's Executive Director granted Edison extensions until September 13, 2001, to tender the NOI. As of the date of this Order Instituting Investigation (OII) and Order to Show Cause (OSC), Edison has failed to tender that NOI.

Edison has submitted a written proposal stating its concurrence that it has failed to meet the terms of D.01-06-039, and offering a proposed resolution to these issues. Edison proposes to voluntarily pay a penalty for its failure to comply, and indicates that it will file its NOI no later than December 17, 2001.

Edison's proposal may reasonably resolve the issues before us. We will authorize the assigned administrative law judge in this proceeding to determine whether it is necessary for this OSC and investigation to proceed, and to schedule hearings if necessary, once Edison's December 17, 2001 filing is made and Edison has complied with the terms of its proposal.

### **Background**

In D.01-06-039, the Commission granted Edison's motion to defer its next general rate case (GRC) to a 2003 TY and ordered Edison to tender its NOI to the Commission no later than August 15, 2001. Edison had tendered a limited NOI for its TY 2002 GRC that the Commission concluded was outdated.

Edison requested two extensions of time to submit its NOI. The first request, submitted to the Executive Director on August 1, 2001, requested an extension until October 16, 2001, to tender the NOI due to uncertainty concerning legislation related to Edison's Memorandum of Understanding with the California Department of Water Resources. The Executive Director granted Edison a limited extension until September 4, 2001, to tender its NOI because the Commission staggers major proceedings to facilitate efficient use of Commission resources. On August 23, 2001, Edison submitted the second extension request in conjunction with a petition to modify D.01-06-039 and requested the extension to permit parties the opportunity to comment on and the Commission to act on Edison's petition. On September 4, 2001, the Executive Director granted Edison a second extension, until September 13, 2001, to tender its NOI.

Edison's Petition to Modify D.01-06-039, filed on August 23, 2001, requested that the Commission change the timing for its next GRC and permit Edison to tender its NOI within 75 days after resolution of uncertainties surrounding legislative alternatives to address California's energy crisis and its

effect on Edison's financial condition. Edison also proposed that the Commission staff audit's findings be reported in the existing docket for Edison's 1995 GRC.

On September 13, 2001, Edison sent a letter to the Executive Director to inform him that for the reasons stated in Edison's Petition to Modify, Edison was unable to tender its NOI on September 13, 2001. On September 13, 2001, the Executive Director responded to Edison's letter and informed Edison that if it did not submit its NOI at the close of business that day Edison would be out of compliance with D.01-06-039.

Although Edison submitted a letter to the Commission's President on October 26, 2001, stating that Edison intends to submit its NOI to the Office of Ratepayer Advocates no later than December 17, 2001, this does not vitiate Edison's duty to fully comply with Commission orders.

On December 10, 2001, Edison submitted a letter stating that Edison recognizes its failure to comply with D.01-06-039. Edison proposes to mitigate this failure by:

- Offering to submit its NOI on or before December 17, 2001;
- Offering to commit to work with ORA and Commission staff to mitigate the impacts of the delay in filing the NOI; and
- Offering to voluntarily pay a penalty of \$47,500 for failing to comply with D.01-06-039.

### **OII and Scope of Proceeding**

Based on good cause as shown in the background section above, and as described below, this OII shall be opened to investigate the actions of Edison and its officers and employees for non-compliance with D.01-06-039. This OSC shall issue to permit Edison, its officers and employees to show cause whether or not they should be held in contempt for their failure to comply with D.01-06-039. This OII and related OSC are issued subject to the authority granted to the

Commission under Public Utilities Code §§ 702, 2101, 2109, 2110, and 2113. Edison and its officers and employees responsible for failing to comply with D.01-06-039 shall be made respondents to this OII and the related OSC.

The above-referenced code provisions require compliance with Commission orders, decisions, directions or rules and permit the Commission to punish by contempt for failure to comply with any part of a Commission order, decision, rule, regulation, direction, demand, or requirement. Further, the Commission may request the appropriate authorities to file criminal charges for such failure to comply.

This OII and related OSC shall also determine whether Edison and its officers and employees should be subject to the penalties provided for in Public Utilities Code §§ 2107, 2108, and 2113. Public Utilities Code § 2107 provides for a penalty of not less than \$500, nor more than \$20,000 for each offense. Public Utilities Code § 2108 provides that:

“Every violation of the provisions of this part or of any part of any order, decision, decree, rule, direction, demand, or requirement of the commission, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day’s continuance thereof shall be a separate and distinct offense.”

Public Utilities Code § 2113 provides that the Commission may punish for contempt “in the same manner and to the same extent as contempt is punished by courts of record.”

Edison’s proposal to submit its NOI by December 17, 2001, and voluntarily paying a penalty for failing to comply with the Commission’s decision appear to reasonably resolve the matters described herein. However, to ensure that these issues are resolved expeditiously, we will move forward with the OSC and OII as discussed. We will however, give the assigned Administrative Law Judge (ALJ)

in this proceeding the authority to determine whether any future actions are needed, including the scheduling of hearings, in this proceeding once Edison has complied with the terms of its proposal. Other interested persons may participate in this OII as provided for in Rule 54 of the Commission's Rules of Practice and Procedure.

### **Preliminary Scoping Memo**

Rule 6(c)(1) of the Commission's Rules of Practice and Procedure provides that an OII and OSC shall determine the category and need for hearing, and shall attach a preliminary scoping memo. This OII and the related OSC are determined to be adjudicatory, as that term is defined in Rule 5(b). Any person who objects to the categorization of this proceeding may appeal the categorization pursuant to Rule 6.4.

Consistent with the adjudicatory categorization of this proceeding, there will be a formal hearing on the OII and related OSC involving adjudicative facts, as may be directed by the assigned ALJ in this proceeding in a subsequent ruling<sup>1</sup>. Consistent with Rule 6.2, the assigned Commissioner may set a prehearing conference in advance of the formal hearing through the issuance of an assigned Commissioner's ruling.

A copy of this OII and OSC shall be served on Edison, and its attorney.

Consistent with Rule 6(e), we expect that this proceeding will be concluded within 12 months.

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<sup>1</sup> Adjudicative facts are defined in Rule 8(f)(3) as facts which "answer questions such as who did what, where, when, how, why, with what motive or intent."

## **Ex Parte Communications**

This proceeding is subject to Rule 7, which specifies standards for engaging in ex parte communications and the reporting of such communications. Pursuant to Rule 7(a)(3) and 7(b), ex parte communications are prohibited.

## **O R D E R**

Therefore, **IT IS ORDERED** that:

1. For good cause shown, an Order Instituting Investigation (OII) and a related Order to Show Cause (OSC) are instituted on the Commission's own motion to investigate non-compliance with a Commission decision and to permit Southern California Edison Company (Edison) and the responsible officers and employees to show cause whether or not they should be held in contempt and should be subject to the penalties provided for in the Public Utilities Code for their failure to comply with Decision 01-06-039.
2. Edison and its officers and employees responsible for deciding that Edison would not tender its Notice of Intent (NOI) for Test Year 2003 on September 13, 2001, shall be made respondents to this OII and related OSC and shall appear at any hearing scheduled by the assigned Administrative Law Judge (ALJ) in this proceeding.
3. The Executive Director shall cause this OII and related OSC to be served on Edison and its attorney, and on the service list in Application 93-12-025 and Investigation 94-02-002.
4. The Commission staff shall appear at the hearing on the OSC to cross-examine Edison's witnesses, as necessary.
5. The category of this OII and related OSC is determined to be adjudicatory.

6. Any person who objects to the categorization of this OII and related OSC shall file an appeal pursuant to Rule 6.4 of the Commission's Rules of Practice and Procedure.

This order is effective today.

Dated December 11, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners

I will file a dissent.

/s/ HENRY M. DUQUE  
Commissioner

**I.01-12-007**

**Commissioner Henry M. Duque dissenting:**

**Item H-10 dissent**

The Commission should be concerned about compliance with its orders. I recognize that Edison was not in technical compliance with our order. Yet it is my belief that we should withdraw the Order to Show Cause (OSC), rather than take written comments and hold hearings, as proposed in the majority decision. I reach this conclusion for three reasons. First and foremost, Edison has committed in writing to filing its general rate case (GRC) by December 17<sup>th</sup> and paying \$47,500 in penalties. Second, there were extenuating circumstances. There is no dispute that Edison's uncertain financial future prevented it from developing reliable cost forecasts for its GRC. Edison was engaged in a protracted legislative debate, the outcome of which would have had substantial GRC ramifications. It was difficult, if not impossible, for Edison to make forecasts and assumptions to develop its general rate case. This is in addition to the absence of a Commission decision on utility retained generation.

Third, Edison did not ignore our decision. Edison informed the Commission early on that it could not file a meaningful GRC until its financial situation was resolved. There was numerous correspondence exchanged between Edison and the Commission in an attempt to address this matter. Edison also submitted a Petition to Modify the filing deadline, a petition still unresolved by this Commission.

In summary, we have the facts that we need to withdraw this item from our agenda. Edison has committed to filing its general rate case and paying penalties. Issuing the OSC will simply result in a waste of both Edison and Commission resources. We no need written comments from the parties or hearings to reach this conclusion.

For these reasons, I must dissent.

/s/ HENRY M. DUQUE  
Henry M. Duque  
Commissioner

December 11, 2001  
San Francisco, California